



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,889	01/05/2004	Tatsunori Kanai	246713US-2CONT	2074
22850	7590	01/03/2008		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
			EXAMINER	
			MIZRAHI, DIANE D	
			ART UNIT	PAPER NUMBER
			2165	
			NOTIFICATION DATE	DELIVERY MODE
			01/03/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdoCKET@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

Office Action Summary

Application No.

10/750,889

Applicant(s)

KANAI ET AL.

Examiner

Diane Mizrahi

Art Unit

2165

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 01 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

DIANE MIZRAHI
PRIMARY EXAMINER

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 10/01/2007 have been fully considered. Based on Applicant's amendment and remarks, a new rejection is made. Claims 1-9 are pending, claims 1, 4, and 7 are independent claims, effective filing date 01/05/2004.

See new office action below:

Claim Rejections - 35 USC 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-9 are rejected under 35 U.S.C. 101 because the claims are directed to a non-statutory subject matter, specifically, the claims are not directed towards the final result that is "useful, tangible and concrete.

See State Street, 149 F.3d at 1373-74 USPQ2d at 1601-02 and Alappat, 33 F.3d at 1544, 31 USPQ2d at 1557). The decisions state to be eligible for patent protection, the claimed invention as a whole must accomplish a practical application. A claim limited to a machine or manufacture, which has a practical application, is statutory. Alappat, 33 F.3d at 1544, 31 USPQ2d at 1557). That is, it must produce a "useful, concrete and tangible result". The purpose of this requirement is to limit patent protection to inventions that possess a certain level

of “real world” value as opposed to subject matter that represents nothing more than an idea or concept, or is simply a starting point for future investigation or research (Brenner v. Manson, 383 U.S. 519, 528-36, 148 USPQ 689, 693-96 (1966); In re Fisher, 421 F.3d 1365, 76 USPQ 2d 1255 (Fed. Cir. 2005); In re Ziegler, 992 F.2d 1197, 1200-03, 26 USPQ 2d 1600, 1603-06(Fed. Cir.1993).

Regarding Claim 1-6, Claim 1 recites “a system/method” comprising a “modules “ and “manager” and a “application program” for performing various functions. The disclosure of the present invention expressly states “ data management system 1 carries out file operations for managing the file system 3 upon receiving requests from the application programs ” (i.e. software) (emphasis added -- see Specification → [0054]). Thus, for purposes of examination, the examiner interprets the recited “*system*” and the recited “*modules, manager*” to comprise only computer software. Accordingly, the “system ” recited in Claim 1 and 4 is software *per se*.

Computer software is not a process, a machine, a manufacture or a composition of matter. Accordingly, Claim 1 and 4 fails to recite statutory subject matter, as defined in 35 U.S.C. 101.

Claims dependent claims 2-3 and 5-6 and merely further describe the recited “system .” Accordingly, Claims 1-6 fail to recite statutory subject matter, as defined in 35 U.S.C. 101.

Regarding Claims 4 and 7, computer programs do not define any structural and functional relationships between the computer program and other claimed elements of a computer which permit the computer’s program functionality to be realized. Yet, a computer readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program’s functionality to be realized, and thus is statutory.

Claims 8-9 are dependent claims and rejected under the same reasons as claim 7.

Examiner recommends that to satisfy the 101 rejection, and to be “useful”, the claim must satisfy the utility requirement thus the invention has to be specific, substantial and credible.

(MPEP 2107 and In re Fisher, 421 F.3d 1365, 76 USPQ 2d 1255 (Fed. Cir. 2005); the claims must produce a real-world result. Benson, 409 U.S. at 71-72, 175 USPQ at 676-77; and that the result that can be substantially repeatable or must substantially produce the same result again. In re Swartz, 232 F.3d 862, 864, 56 USPQ2d 1703, 1704 (Fed. Cir. 2000).

Examiner recommends Applicant to amend the claims without adding any new matter to the originally filed specification. In the interest of compact prosecution, the application is further examined against the prior art, as stated below, upon the assumption that the applicants may overcome the above stated rejections under 35 U.S.C. 101.

The rejection of claims 1-9 under 35 USC 102 remains, because Underwood clearly teaches Applicant's claimed invention. This office action is incorporated herein. See

Examiner's remarks:

Claim Rejections - 35 USC .§ 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action: A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21 (2) of such treaty in the English language. Claims 1-9 are rejected under 35 U.S.C. 102(e) as being anticipated by

Roy Aaron Underwood (US Patent No. 6523027 B1 date filed on July 30, 1999 and Underwood hereinafter).

Regarding Claim 1, Underwood teaches resource management system to be used in a management system for applying operations on data outputted from a data storage system and providing data to a processing of an application program, the resource management system comprising: a plurality of data operation modules configured to operate data which have different operation functions (Detailed Description, paragraphs:); and a resource manager (Detailed Description, paragraphs: 111, 1176, 1178, 1181) having a data operation module management table (Detailed Description, paragraphs: 42, 142, 285) to be used at a time of combining the plurality of data operation modules (Detailed Description, paragraphs: 12, 16, 28,279), the resource manager configured to receive a data operation request from the application program, refer the data operation module management table (Detailed Description, paragraphs: 42, 142, 285) select and combine necessary data operation modules and output the selected and combined data operation modules such that the application program can carry out a desired operation using the selected and combined modules (Detailed Description Text (paragraph 995) necessary data operation modules of the plurality of data operation modules (Detailed Description, paragraphs: 2568 and 3557).

Regarding Claim 2, Underwood teaches a plurality of resource operation module managers each configured to manage one or more corresponding data operation modules of the plurality of data operation modules respectively (Detailed Description, paragraphs: 42, 142, 285).

Regarding Claim 3, Underwood teaches wherein the resource operation module management table records a correspondence between a name of each of the plurality of data operation modules and a pointer to one of the plurality of data operation module managers that manages the one or more corresponding data operation modules (Detailed Description, paragraphs: 44, 49, 51, 129, 2078).

Regarding Claim 4, Underwood teaches resource management method to be used in a data management method in a data management system having a plurality of data operation modules configured to operate data which have different operation functions, for applying operations on data outputted from a data storage system and providing data to a processing of an application program (Detailed Description, paragraphs: 44, 49, 51, 129, 2078) ... comprising: receiving a data operation request from the application program; (i.e. application somewhere where it can be accessed by subsequent programs) (Detailed Description, paragraph 657); referring to a data operation module management table which is used at a time of combining the data operations modules (Detailed Description Text (paragraph 995) ; and selecting and combining data operation modules such that the application program can carry out a desired operation by using the selected and combined data operation modules (i.e. reads on making changes and save as necessary) (Detailed Description Text (paragraph 995).

Regarding Claim 5, Underwood teaches managing one or more corresponding data operation modules respectively at data operation managers (i.e. Detailed Description) (Paragraph Table paragraph 37).

Regarding Claim 6, Underwood teaches wherein the data operation module management table records a correspondence between a name of each data operation module and a pointer to a data operation module manager that manages that data operation module (i.e. reads on a database) (Detailed Description Paragraph Table), (paragraph 36).

Regarding Claim 7, Underwood teaches a computer program product for causing a computer to function as a resource management system to be used in a data management system having a plurality of data operation modules configured to operate data which have different operation functions, for applying operations on data outputted from a data storage system and providing data to a processing of an application program, the computer program product comprising: a first computer program code for causing the computer to receive a data operation request from the application program (Detailed Description, paragraph 657); a second computer program code for causing the computer to refer a data operation module management table which is used at a time of combining the plurality of data operation modules (Detailed Description Text (paragraph 995); and a third computer program code for causing the computer select and combine necessary data operation modules and output the selected and combined data operation modules such that the application program can carry out a desired operation by combining necessary data operation modules of the plurality of data operation modules (Detailed Description Text (paragraph 995).

Regarding Claim 8, Underwood teaches a fourth computer program code for causing the computer to manage one or more corresponding data operation modules of the plurality of data operation modules respectively at each of a plurality data operation managers (i.e. configuration management repositories) (Detailed Description Text (paragraph 481).

Regarding Claim 9, Underwood teaches wherein the data operation module management table records a correspondence between a name of each of the plurality of data operation modules and a pointer to one of the plurality of data operation module managers that manages the one or more corresponding data operation modules (i.e. reads on a database) (Detailed Description Paragraph Table), (paragraph 36).

Remarks

1. Regarding Applicant's comment that "not at all related to a management of resources is provided by a plurality of data operation modules with different operation functions by selecting", Examiner disagrees. Examiner believes that Underwood teaches the claimed, "not at all related to a management of resources is provided by a plurality of data operation modules with different operation functions by selecting" (i.e. see Figure 93 A, element 9300 (i.e. software module is altered by the developer) (i.e. reads on management applications, Figures 45 and 48), see also Figure 78, (i.e. reads on the user choosing the platform, or applications, or manager, etc.).

2. Regarding Applicant's comment that, "resource management system has absolutely nothing to do with an interface between servers", Examiner disagrees. Examiner believes that Underwood teaches the claimed, "resource management system has absolutely nothing to do with an interface between servers", (Figure 53, i.e. www servers and lan servers) (Figure 1, #152, 153, 155) (see also, Figure 1D i.e. web application server) (Figure 16 whole figure); see also Figure 16B i.e. SQL DBMS server) and Figure 18B.

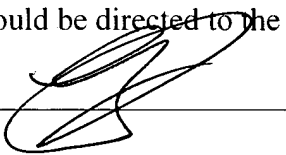
3. Regarding Applicant's comment that, "resource manager ...", Examiner disagrees. Examiner believes that Underwood teaches the claimed, resource manager..." (i.e. reads on management applications, Figures 45 and 48), see also Figure 78, (i.e. reads on the user choosing the platform, or applications, or manager, etc.)); see also Figure 16B i.e. SQL DBMS server) and Figure 18B.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Diane D. Mizrahi whose telephone number is 571-272-4079. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin can be reached on (571) 272-4146. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 305-3900 for After Final communication.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.



Diane Mizrahi
Diane.Mizrahi@USPTO.gov
Primary Patent Examiner
Technology Center 2100

December 23, 2007